

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :  
:  
-v- : 05cr909 (DLC)  
:  
D'ANGELO NUNEZ, : ORDER  
:  
Defendant. :  
:  
----- X

DENISE COTE, District Judge:

On May 5, 2020, defendant D'Angelo Nunez filed a motion to modify or reduce his sentence pursuant to 18 U.S.C. § 3582(c) (1) (A). The Government opposed Nunez's early release, and an Order of June 2 denied Nunez's May 5 petition, noting that the denial was without prejudice to renewal insofar as it sought compassionate release due to the COVID-19 pandemic. Nunez had not exhausted his administrative remedies with respect to that portion of his request.<sup>1</sup>

Nunez renewed his petition on October 15.<sup>2</sup> He has attached evidence of requests to the Bureau of Prisons for a modified sentence due to the impact of the pandemic and a denial of those requests by the Warden on August 10. This Order considers all

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<sup>1</sup> The June 2 Order was mailed to Nunez on June 26 and again on September 8. Nunez reports that he received it on September 15.

<sup>2</sup> The October 15 motion was received and docketed on October 22.

of the submissions made by Nunez since May 5 insofar as they may support his current application.

Once a petitioner fulfills the statutory exhaustion requirement, the Court may reduce the petitioner's sentence, if after consideration of the factors set forth in 18 U.S.C. § 3553(a), it finds that "extraordinary and compelling reasons" warrant such a reduction. 18 U.S.C. § 3582(c)(1)(A)(i). As the Court of Appeals for the Second Circuit has explained, in the wake of the First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194, district courts are tasked with "independently . . . determin[ing] what reasons, for purposes of compassionate release, are extraordinary and compelling." United States v. Brooker, 976 F.3d 228, 234 (2d Cir. 2020) (citation omitted).

Nunez's renewed motion is denied. It is assumed that Nunez has properly exhausted his administrative remedies with respect to this request. Nunez has not, however, demonstrated extraordinary circumstances that warrant a reduction of sentence and the § 3553(a) factors are weighted against his early release.

In March 2007, Nunez was sentenced principally to a mandatory minimum term of imprisonment of 240 months following conviction at trial. He is now in his mid-forties and is due to be released in February 2023. He is subject to an immigration

detainer and will likely be deported to the Dominican Republic upon release.

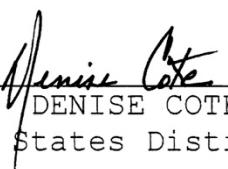
Nunez reports that he suffers from several health problems. Those conditions do not appear to be conditions that put Nunez at risk for a severe case of COVID-19. Nor do the § 3553(a) factors support a reduction of sentence. As noted at sentencing, Nunez's crimes and lengthy criminal history supported a lengthy sentence. He was a career offender with a guidelines range of 360 to life imprisonment. Even with those considerations, the Court sentenced Nunez to the minimum sentence then allowed by law. Nunez has not shown that a further departure is warranted now. It is hereby

ORDERED that Nunez's October 15, 2020 petition is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall mail Nunez a copy of this Order and note mailing on the docket.

SO ORDERED:

Dated:      New York, New York  
                November 17, 2020

  
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DENISE COTE  
United States District Judge

Copy mailed to:  
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